

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

## **I. DISPUTE**

1. a. Whether there should be additional reimbursement of \$5,876.77 for date of service, 05/08/01.
- b. The request was received on 03/14/02.

## **II. EXHIBITS**

1. Requestor, Exhibit I:
  - a. Initial Submission of TWCC-60
    1. UB-92s
    2. EOB(s)
  - b. Additional documentation received on 06/18/02
    1. Position Statement
    2. Medical Records
    3. UB-92
    4. EOBs
    5. Example EOBs from other Carriers
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
2. Respondent, Exhibit II:
  - a. Response to a Request for Dispute Resolution
  - b. Reimbursement data
  - c. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14-day response to the insurance carrier on 06/20/02. Per Rule 133.307 (g) (4) or (5), the carrier representative signed for the copy on 06/20/02. The response from the insurance carrier was received in the Division on 07/01/02. Based on 133.307 (i) the insurance carrier's response is timely.
4. Notice of Medical Dispute is reflected as Exhibit III of the Commission's case file.

### **III. PARTIES' POSITIONS**

1. Requestor: Letter dated 01/28/02

“The patient presented to our facility on 5-8-01 for outpatient surgery for right temporomandibular [sic] joint arthroplasty and endoscopically assisted arthroplasty as a result of a motor vehicle accident in December 1999 while in the course and scope of her employment. Pursuant to TWCC Rule 134.401 (a)(4), ‘ambulatory/outpatient shall be at a fair and reasonable rate.’ Respondent paid a total of \$884.20 for the entire bill. We do not feel that this represents a ‘fair and reasonable’ reimbursement. Attached documentation supports that 3 different carriers have paid our facility at a rate of 78% & 100% for this same outpatient service. Therefore, we feel that pursuant to Rule 134.401 (a)(4), fair and reasonable for this entire admission would be a total of \$6,760.97, 85% of the billed charges.”

2. Respondent: Letter dated 07/01/02

“The requester has not shown that the fees paid to date fall below the statutory standard. It is this carrier’s position that a party seeking recovery of medical fees from a workers’ compensation carrier under the Texas Workers’ Compensation Act has the burden of proof to establish by a preponderance of the credible evidence that the fees sought are allowable under the Act. It is equally applicable in this case, where the requester has already received payment from this carrier for the very same services it not seeks additional payment, that requester has the burden of establishing by a preponderance of the credible evidence that this carrier’s payments fall short of the fee payments required by §413.011, Tex. Labor Code, and that an additional, specified amount of money must be paid to reach the payment level established by §413.011....”

### **IV. FINDINGS**

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 05/08/01.
2. This decision is being written based on the documentation that was in the file at the time it was assigned to this Medical Dispute Resolution Officer.
3. Per the Requestor’s Table of Disputed Services, the Requestor billed the Carrier \$7,954.09 for services rendered on the above date in dispute.
4. Per the Requestor’s Table of Disputed Services, the Carrier paid the Requestor \$884.20 and continues to deny additional reimbursement as “M –THE REIMBURSEMENT FOR THE SERVICE RENDERED HAS BEEN DETERMINED TO BE FAIR AND REASONABLE BASED ON BILLING AND PAYMENT RESEARCH AND IS IN ACCORDANCE WITH LABOR CODE 413.011 (B).”.
5. The amount in dispute is \$5,876.77 for services rendered on the above date in dispute.

## V. RATIONALE

Medical Review Division's rationale:

The medical documentation indicates the services were performed at an ambulatory surgery center. Commission Rule 134.401 (a)(4) states ASCs, "shall be reimbursed at a fair and reasonable rate..."

Section 413.011 (b) of the Texas Labor Code states, "Guidelines for medical services must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fees charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf. The Commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines."

Rule 133.307 (g) (3) (D) places certain requirements on the provider when supplying documentation with the request for dispute resolution. The provider is to discuss, demonstrate, and justify that the payment amount being sought is fair and reasonable. Commission Rule 133.304 (I) (1-4) places certain requirements on the Carrier when reducing the billed amount to fair and reasonable. Regardless of the Carrier's methodology or lack thereof, or a timely or untimely response, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine what would be fair and reasonable reimbursement for the services provided. The carrier has submitted reimbursement data to explain how it arrived at what it considers fair and reasonable reimbursement. Even though the provider has submitted EOBs from other carriers to document what it considers fair and reasonable reimbursement, the burden remains on the provider to show that the amount of reimbursement requested is fair and reasonable. The willingness of some carriers to reimburse at or near the billed amount does not necessarily document that the billed amount is fair and reasonable and does not show how effective medical cost control is achieved, a criteria identified in Sec. 413.011(b) of the Texas Labor Code. Therefore, based on the evidence available for review, the Requestor has not established entitlement to additional reimbursement.

The above Findings and Decision are hereby issued this 27th day of August 2002.

Denise Terry, R.N.  
Medical Dispute Resolution Officer  
Medical Review Division

DT/dt

This document is signed under the authority delegated to me by Richard Reynolds, Executive Director, pursuant to the Texas Workers' Compensation Act, Texas Labor Code Sections 402.041 - 402.042 and re-delegated by Virginia May, Deputy Executive Director.